

# **EXHIBIT "C"**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA

2                   DAD'S PRODUCTS COMPANY,        )  
3                   INC.,                            )  
4                   Plaintiff,                    )  
5                   VS.                            ) CIVIL ACTION  
6                   SERGEANT'S PET PRODUCTS,      )  
7                   INC.,                            )  
8                   Defendant.                    )

9                   -----

9                   ORAL DEPOSITION OF

10                   ALAN BROWN

11                   August 16, 2005

12                   Volume 1

13

14                   ORAL DEPOSITION OF ALAN BROWN, produced as  
15                   a witness at the instance of the Plaintiff, and duly  
16                   sworn, was taken in the above-styled and numbered cause  
17                   on the 16th of August, 2005, from 10:12 a.m. to 11:31  
18                   a.m., before Michelle L. Varner, CSR in and for the  
19                   State of Texas, reported by machine shorthand, at the  
20                   offices of Sergeant's Pet Products, 1601 Elm Street,  
21                   Suite 300, in the City of Dallas, County of Dallas, and  
22                   State of Texas, pursuant to the Federal Rules of Civil  
23                   Procedure and the provisions stated on the record or  
24                   attached hereto.

25

1 A P P E A R A N C E S

2

3 Neal R. Devlin  
4 KNOX McLAUGHLIN GORNALL & SENNETT  
5 120 West Tenth Street  
6 Erie, Pennsylvania 16501  
7 (814) 459-2800

8 FOR THE PLAINTIFF

9

10 David E. White  
11 THORP REED & ARMSTRONG, LLP  
12 301 Grant Street  
13 Suite 1400  
14 Pittsburgh, Pennsylvania 15219  
15 (412) 394-2343

16 Steven E. Smathers  
17 Attorney at Law  
18 1601 Elm Street  
19 Suite 300  
20 Dallas, Texas 75201  
21 (214) 871-7227

22 FOR THE DEFENDANT

23

24

25

1 I N D E X

2

3 WITNESS: Alan Brown

4 PAGE

5 Examination by Mr. Devlin 4

6

7

8

9 E X H I B I T S

10 NO. DESCRIPTION PAGE

11 14 Asset Purchase Agreement 7

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 ALAN BROWN,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. DEVLIN:

6 Q. Hi, Mr. Brown, my name is Neal Devlin. We  
7 met a few minutes ago. I know you sat through  
8 Mr. Scharf's deposition. Can I just get you, for the  
9 record, to tell me where you are presently employed?

10 A. I am the chairman of Sergeant's Pet Care  
11 Products.

12 Q. Okay. How long have you held that position?

13 A. Five years.

14 Q. What was your position prior to that?

15 A. I have been involved in various investments.  
16 I have been chairman of several other companies over  
17 the last 20 years, all of which were related to  
18 private equity investments.

19 Q. Okay. Were you involved in Pet Life Foods?

20 A. I was.

21 Q. Okay. What was your involvement in Pet  
22 Life?

23 A. I was on the board of Pet Life and the  
24 chairman of Pet Life after we purchased the company in  
25 1999.

1 Q. When you say "we," who purchased the company  
2 in 1999?

3 A. A group of investors that have made other  
4 acquisitions.

5 Q. Okay. Was Mr. Sowell included in that  
6 group?

7 A. Yes.

8 Q. Okay. In 1999, when the group of investors  
9 purchased Pet Life, was there a majority owner of Pet  
10 Life?

11 A. James Sowell was the majority owner.

12 Q. Okay. Were you also involved -- I believe  
13 Mr. Scharf testified that Mr. Sowell became the  
14 majority shareholder in Sergeant's sometime in 2000?

15 A. Yes, sir, around September of 2000.

16 Q. Okay. Were you involved in that, in the  
17 acquisition of Sergeant's with Mr. Sowell?

18 A. Yes.

19 Q. Okay. Once that acquisition in September  
20 of 2000 occurred, did you -- is that when you became  
21 chairman of Sergeant's?

22 A. Yes.

23 Q. Okay. At that time, did you maintain a  
24 position on Pet Life's board?

25 A. I did.

1 Q. Okay. And what was your position at that  
2 time on Pet Life's board?

3 A. I was still chairman of the board.

4 Q. And did you remain chairman of Pet Life's  
5 board until -- well, through May of 2002?

6 A. It was about that time that I resigned as a  
7 director and as chairman.

8 Q. So in -- was it in May of 2002 that you  
9 resigned?

10 A. I'd have to go back and see my files. It  
11 was around midyear of 2002.

12 Q. Okay. Why did you resign as chairman of Pet  
13 Life in midyear 2002?

14 A. Basically, the company was sold, the assets  
15 were sold, the patents and trademarks were sold. And  
16 really Pet Life became just a very scaled down  
17 operating entity for a short period of time.

18 Q. Okay. Between -- let me go back.

19 MR. DEVLIN: Will you mark this as  
20 Exhibit 1?

21 MR. WHITE: May I suggest that  
22 perhaps it would be better to --

23 MR. DEVLIN: Just number it  
24 sequentially?

25 MR. WHITE: Yeah. That way there's

1 no Brown versus Scharf.

2 MR. DEVLIN: Can we do that, then?

3 THE REPORTER: Sure. Do you want  
4 the exhibits all bound together in one book then?

5 MR. DEVLIN: That's fine.

6 MR. WHITE: That's fine.

7 (Exhibit No. 14 marked.)

8 Q. (By Mr. Devlin) The court reporter has just  
9 marked as Exhibit 14 an agreement entitled Asset  
10 Purchase Agreement among Pet Life Foods, Dad's  
11 Products Company, Gains Pet Foods Corp., Gains Pet  
12 Foods, Mapleleaf Marketing and Chateau Holdings. Are  
13 you familiar with this -- this document, this  
14 agreement?

15 A. Yes.

16 Q. Okay. And, I mean, just for the record, you  
17 signed this agreement as Pet Life Foods chairman; is  
18 that correct?

19 A. Yes.

20 Q. Okay. Do you recall what the -- I realize  
21 it's a very long agreement, but what the business  
22 purpose of this agreement was?

23 A. The business purpose was to allow Pet Life  
24 Foods and Dad's to purchase the assets -- and I'm  
25 talking about trademarks and so forth. We did not buy

1       much of the machinery or iron. And it would benefit  
2       Dad's because they were buying the -- as referred to  
3       in here as the dog food business. And Pet Life was  
4       buying as referred in here, the pet treat business,  
5       which Pet Life was trying to increase its market share  
6       in treats and Dad's was trying to increase its market  
7       share in the dog food business.

8           Q.     Did you understand that as part of the  
9       consideration going to Gains, as the seller of the  
10       assets you just discussed, that Dad's and Pet Life  
11       were -- had royalty obligations to Gains?

12          A.     Yes.

13          Q.     Okay. I'm going to show you what's  
14       previously been marked as Exhibit 13, which is  
15       entitled, Supplier and Royalty Agreement. Are you  
16       familiar with that document?

17          A.     Yes.

18          Q.     Okay. If you look at page eight of that  
19       document, article three, entitled Royalty Payments.  
20       And if you'll go ahead and review article three,  
21       subparagraphs A through D, if you don't mind.

22          A.     All right.

23          Q.     Okay. Did you understand that article to  
24       describe the royalty obligations Dad's and Pet Life  
25       had to Gains as a result of their purchase of assets

1 from Gains?

2 A. Yes.

3 Q. Okay. Did you understand those obligations  
4 to be joint and several as between Dad's and Pet Life?

5 A. Yes.

6 Q. Okay. In addition to the royalty  
7 obligations, what other considerations did Pet Life  
8 pay to receive the assets at issue in Exhibit 14, the  
9 Asset Purchase Agreement?

10 A. We had to agree to take product from the  
11 selling company for a period of time, but no longer  
12 than, I think, January of 2000.

13 Q. Okay.

14 A. There was some cash and consideration up  
15 front. Cash or letter of credit, I've forgotten. But  
16 there was some consideration during this period of  
17 time.

18 Q. Okay. Subsequent to November 23, 1999, did  
19 Pet Life use the trademarks it purchased from Gains?

20 A. Subsequent to the Purchase Agreement of '99?

21 Q. Yeah, after you purchased it.

22 A. Yes.

23 Q. Okay. During that period of time did Pet  
24 Life make royalty payments pursuant to the Royalty and  
25 Purchase -- the Royalty and Supply Agreement?

1           A.     Yes.

2           Q.     Okay.  What was the process for making those  
3     payments?  In other words, did Pet Life make them  
4     directly to Gains?  Did Pet Life make them to Dad's?  
5     Or how was that worked out?

6           A.     It seems like, for a period of time they  
7     were made directly.  And then we tried to create the  
8     bookkeeping and accounting more efficiently and we  
9     started making them to Dad's.

10          Q.     Okay.  So you believe that for a period of  
11     time Pet Life would make a payment directly to Gains  
12     and Dad's would make a payment directly to Gains; is  
13     that right?

14          A.     Yes.

15          Q.     And then at some point in time that changed  
16     to where Pet --

17          A.     Trying to streamline the operations, yes.

18          Q.     Okay.  And then would Pet Life make a  
19     payment to Dad's and Dad's would make one royalty  
20     payment to Gains?

21          A.     Uh-huh.

22          Q.     Okay.  What was your understanding as to the  
23     apportionment of the royalty payments between Dad's  
24     and Pet Life?

25          A.     There was a percentage that we were each to

1 make.

2 Q. Okay.

3 A. And if I remember right, the percentage was  
4 based on the volume of business that we were buying.

5 And it was 60/40, I believe, but I'm not sure.

6 Q. Okay. I think that's right. Let me show  
7 you what's previously been marked as Exhibit 6, which  
8 is a Settlement Agreement. That agreement is dated  
9 August 1st, 2001. As you can see on page four -- is  
10 that your signature that you signed that agreement?

11 A. Yes.

12 Q. Okay. We're going to get back to this  
13 agreement with respect to it's effect on Mapleleaf.  
14 But paragraph four, on page two of this agreement,  
15 discusses a royalty obligation. And if you'll review  
16 that.

17 Am I correct that that indicates  
18 that there is an apportionment of that royalty  
19 obligation between Dad's and Pet Life, being  
20 60 percent Pet Life and 40 percent Dad's?

21 A. Yes.

22 Q. Okay. Was it your understanding that was  
23 the apportionment as between Dad's and Pet Life before  
24 this agreement, as well?

25 A. Yes.

1           Q.     Okay.  At or around the time that Dad's and  
2     Pet Life purchased the trademarks and possibly other  
3     assets from Gains, did you understand that an entity  
4     named Mapleleaf was created?

5           A.     Yes.

6           Q.     Okay.  What was the purpose of Mapleleaf?

7           A.     That was the company that was set up for the  
8     express purpose of selling product through both the  
9     Dad's and Pet Life entity in order to track the  
10    royalty -- to track how much volume was going through  
11    to utilize a company called White Cap that was a  
12    distributor, that had been involved in selling the  
13    product in the United States.  So that was the model  
14    that I said we tried to create of efficiencies and to  
15    pool all of the operations of selling and distributing  
16    in the U.S. together.

17          Q.     Okay.  Did -- Pet Life sold product under  
18     the trademarks that it purchased from Gains, correct?

19          A.     Yes.

20          Q.     Okay.  Of that product that it sold, what  
21     percentage of that product was sold through Mapleleaf?

22          A.     It would just be pure speculation on memory.

23          Q.     Okay.  And that's fair enough.  It would not  
24     be a 100 percent, would it?

25          A.     It would be a high majority.  But I do not

1 think it would be a hundred percent.

2 Q. Okay. Did you understand that Mapleleaf  
3 would sell some percentage of the product that would  
4 be sold under the trademarks that were purchased from  
5 Gains, but that some product sold under those  
6 trademarks would also be sold directly from Pet Life  
7 or from Dad's?

8 A. Yes.

9 Q. Okay. What was your understanding as to the  
10 reason for that?

11 A. Relationship of customers.

12 Q. Okay.

13 A. Who knew the customers, customer continuity.

14 Q. Okay. Who ran Mapleleaf?

15 A. Well, from an accounting point of view,  
16 Dad's did.

17 Q. Okay. And why do you say "from an  
18 accounting point of view"?

19 A. All of the books and records were kept in  
20 and around the Dad's corporate headquarters. They may  
21 have been in a separate building but they were all up  
22 in Pennsylvania versus Michigan, where Pet Life had  
23 its operation.

24 Q. Okay. Did Pet Life have contact with  
25 Mapleleaf with respect to the sale of its product?

1 A. Yes.

2 Q. Okay. Did you understand that Pet Life had  
3 equal access to Mapleleaf as did Dad's? And by equal  
4 access, I'm saying, equal access to the books, equal  
5 access with communications to Mapleleaf, that type of  
6 thing.

7 A. Yes.

8 Q. Okay. Was Pet Life's use of the trademarks  
9 it purchased from Gains profitable for Pet Life?

10 A. Initially, for a short period of time, yes.

11 Q. Okay. How about not initially? I take by  
12 that that at some point in time it ceased being  
13 profitable?

14 A. Yeah.

15 Q. Okay.

16 A. Do you want to just go into some of the  
17 history here?

18 MR. DEVLIN: I'm fine with you doing  
19 that.

20 MR. WHITE: Yeah, if you can do it.

21 Personal knowledge.

22 A. Pet Life made a very serious mistake in  
23 relying on its existing management to make this  
24 acquisition. Existing management, president and the  
25 plant manager and so forth, told the board that we

1       could manufacture these treats at our plant in  
2       Michigan, efficiently, economically and so forth. But  
3       they need a period of time to come up to scale. So  
4       that's why we had the supply agreement and we made  
5       good money. Pet Life made good money while Gains was  
6       producing the product and we were selling it. And  
7       when that supply agreement ceased in January of 2000,  
8       we immediately saw our profitability go down. And it  
9       really never lived up to its potential.

10                   And so the business started to fail  
11       when the plant never could produce the product that it  
12       cost, that had been basically projected by the senior  
13       management.

14       Q.        Okay. With respect to the trademarks that  
15       you purchased from Gains, I believe you indicated that  
16       Pet Life was interested in those trademarks related to  
17       the pet treats, and that Dad's was related --  
18       interested in the trademarks related to the pet food;  
19       is that correct?

20       A.        Yes.

21       Q.        Can you give me -- are those generally terms  
22       of art in the pet food industry?

23       A.        Yeah. They're called pet food, dog and cat  
24       really, versus treats, which has many, many different  
25       products. There's natural treats, formulated treats,

1 toy treats, vitamin treats.

2 Q. Okay. Did Pet Life produce any pet foods?

3 A. Very, very little, maybe five or six  
4 percent. Our equipment was old. At the time we  
5 bought the business we were producing cat food for a  
6 particular customer. I think all of the dog food  
7 operation had ceased. Pet Life was primarily a  
8 biscuit manufacturer.

9 Q. Okay.

10 A. Very, very small amount. I'm going to guess  
11 less than five percent, was an extruded product the  
12 way you would make cat food or dog food.

13 Q. Okay. I believe we, in talking about the  
14 relationship between Mapleleaf and the sale of product  
15 under -- what I'm going to refer to as the Gains  
16 trademarks, if that's okay, just to make it easier. I  
17 think you indicated that Mapleleaf was the entity that  
18 sold a portion of the product that was sold under  
19 those trademarks and that Pet Life and Dad's also sold  
20 a portion under their own name, is that -- or absent  
21 Mapleleaf; is that correct?

22 A. Their own sales force, yes.

23 Q. Okay. With respect to the division between  
24 foods and treats, was there any arrangement between  
25 Pet Life and Dad's, whether that arrangement be

1       directly or through Mapleleaf, that Dad's would  
2       produce food orders under those trademarks, whether  
3       they came through Pet Life, Mapleleaf, and that Pet  
4       Life would produce the treats under those trademarks  
5       whether the sales came through either Dad's or  
6       Mapleleaf?

7           A.     Yeah.  And I think it was more in line with  
8       existing customers of Gains, not the trademarks.  
9       Because you might have had a customer buying treats  
10      and dog food.  And so Dad's would produce all of the  
11      dog food for that Gains customer.  And I think in one  
12      of the agreements there's a listing of the customers  
13      that we were to follow.

14           Q.     Okay.

15           A.     It did not prohibit Pet Life from continuing  
16      in this small cat food category.

17           Q.     Okay.

18           A.     We could not do it under any trademark we  
19      bought from Gains.  But Pet Life would sell a Pet Life  
20      cat food, if we had already been selling it.  So it  
21      was a customer restriction as to what company produced  
22      what product for that previous Gains customer, i.e.,  
23      the customer list that was purchased along with the  
24      trademark.

25           Q.     Okay.  With respect to those customers, does

1 what you just said hold true regardless of whether the  
2 customer was sold the product through the Mapleleaf  
3 sales force, the Pet Life sales force, or the Dad's  
4 sales force?

5 A. That would be the spirit of the agreement.  
6 Most of the business would have gone through  
7 Mapleleaf. But I know we instructed our people not to  
8 venture into and lead people to think that we were  
9 selling dog food that should have been Dad's business.

10 Q. Okay. And this may get into some of the  
11 intent behind why Mapleleaf was created. But would  
12 you agree that one of the underlying intents behind  
13 creating Mapleleaf and then dividing the previous  
14 Gains customers in that way was based upon established  
15 relationships between those customers and either  
16 Dad's, Pet Life or the absence of those types of  
17 relationships?

18 A. That was the spirit of the agreement.

19 Q. Okay. So in other words, pursuant to the  
20 spirit of the agreement, if Pet Life had an  
21 established relationship with a customer that was  
22 previously a Gains customer, for the trademarks at  
23 issue, subsequent to that, Pet Life may be the --  
24 maintain that relationship and sell products under  
25 those trademarks to that customer; is that right?

1 A. In general, that's right, yes.

2 Q. Okay.

3 A. There might have been an exception or two  
4 like there always is. But, you know, there wasn't a  
5 lot of issues. Pet Life did not do enough dog food to  
6 be a force in the business.

7 Q. Okay.

8 A. And so there really wasn't an issue as to  
9 how you divide up the product sales.

10 Q. Okay. Did you understand, though, that if  
11 in that situation where Pet Life would be the primary  
12 sales contact with the customer, if the customer  
13 placed orders for pet food under the trademarks that  
14 had been purchased, that Pet Life would produce --  
15 sell that food to the customer but that Dad's would  
16 have been the producer of that food?

17 A. I'm not sure that Pet Life would have sold  
18 it. I think it would have gone through a Mapleleaf  
19 invoice.

20 Q. Okay. And now, looking at it from the other  
21 perspective. Any customer that Dad's had an  
22 established relationship with at the time of the 1999  
23 purchase from Gains, some of those customers would  
24 have remained Dad's customers as opposed to becoming  
25 Mapleleaf customers; is that fair?

1           A.     If that customer wasn't on the customer list  
2     that was purchased.

3           Q.     Okay.

4           A.     You had some customers that Dad's might have  
5     been doing business with for years, and they were also  
6     a customer of Gains, and they ended up on the customer  
7     list that we purchased. And then we had to talk about  
8     those exceptions.

9           Q.     Okay. In talking about those exceptions,  
10    was there -- obviously, discussions -- but was there  
11    -- would Pet Life and Dad's have come to an agreement  
12    as to whether Mapleleaf or Dad's would service that  
13    customer?

14          A.     Yes.

15          Q.     Okay. If the agreement was struck such that  
16    Dad's was servicing that customer, did you understand  
17    that the orders Dad's would take, it would produce the  
18    food products, but that Pet Life would produce the  
19    treat products?

20          A.     Yes. With the qualification, I really  
21    wasn't involved day-to-day in working on those  
22    details.

23          Q.     Okay.

24          A.     The president of Pet Life or the president  
25    of Dad's was involved in making sure the sales forces

1 didn't get too aggressive, that the company wasn't  
2 selling the other company's product and, you know,  
3 trying to keep everything above board.

4 And I kept getting the reports back  
5 that things were progressing on a friendly, cordial  
6 basis.

7 Q. Okay. Who was the president of Pet Life at  
8 that time?

9 A. Initially, it was a man named Bud Sloup,  
10 S-l-o-u-p.

11 Q. Okay. How about after Mr. Sloup?

12 A. After a period of time, there was a  
13 gentleman hired, Mr. Atherly.

14 Q. Okay. Are you aware if Pet Life -- you had  
15 previously discussed, with respect to the customer  
16 list, if there had been a customer that had been both  
17 a Gains customer and a Dad's customer such that the  
18 customer showed up on the customer list that was  
19 purchased, there would be discussions as to whether  
20 Dad's would service that customer or Mapleleaf would  
21 service that customer; is that right?

22 A. Yes, and vice versa for Pet Life.

23 Q. Okay. That was my next question. There  
24 were customers that Pet Life had previously had a  
25 relationship with that showed up on the customer list

1 that you referred to?

2 A. Yes.

3 Q. Okay. And the same discussion would have  
4 occurred whether Pet Life would have maintained a  
5 relationship with that customer or whether the  
6 customer would be shifted to Mapleleaf?

7 A. Yes.

8 Q. Okay. And were some of those customers  
9 maintained -- was the relationship maintained between  
10 Pet Life and those customers?

11 A. My memories serve me that there were some  
12 exceptions that had to be worked out and talked  
13 through. That the president of the companies would  
14 agree, but then the sales force would each be real  
15 protective of giving up their contacts and so forth.

16 Q. Okay.

17 A. And so there had to be a little tit for tat,  
18 so to speak.

19 Q. All right. With respect to those types of  
20 customers -- and by "those types of customers," I  
21 mean, any customer that would have had a previous  
22 relationship with either Pet Life or Dad's, and then  
23 had maintained that relationship with Pet Life or  
24 Dad's. In other words, not have come under the  
25 Mapleleaf service. Did Pet Life supply Dad's with

1        treats to service those customers? In other words,  
2        would Pet Life produce treats, send them to Dad's, so  
3        that Dad's would have them in their stock to be able  
4        to provide them to customers who ordered those treats?

5            A.       It probably was, in that example, would have  
6        been produced quote/unquote for Mapleleaf.

7            Q.       Okay.

8            A.       Not for Dad's.

9            Q.       Okay.

10          A.       Because Mapleleaf would have been the  
11        account, if you will, of the grocery store or the  
12        distributor, not Dad's or Pet Life. We would be  
13        producing the treats, sending it to the warehouse,  
14        which happened to be in Pennsylvania, not Michigan.  
15        Dad's would be producing the pet food, sending it to  
16        the warehouse. And that account, Mapleleaf, would  
17        have been reselling it on pallets to the customer.  
18        The customer didn't want a pallet from Pet Life, a  
19        pallet from Dad's and a pallet from Mapleleaf. They  
20        wanted one customer number and one pallet to show up  
21        to fulfill their order.

22          Q.       Okay. And under that -- because of that,  
23        because customers wanted to deal with one entity, as  
24        you said, one pallet. As we previously discussed,  
25        Mapleleaf occasionally was that one entity for a

1 percentage --

2 A. I'd say the majority of the time they were  
3 the entity.

4 Q. Okay. With respect to the exceptions for  
5 that, when either Dad's or Pet Life was the entity,  
6 through whom these sales were going, how is it -- that  
7 looking through Pet Life's perspective -- how is it  
8 Pet Life would obtain the product from Dad's to sell  
9 to that customer?

10 A. Well, theoretically they would send the  
11 product to either the Pet Life warehouse or we would  
12 work and send it to their warehouse and work out the  
13 billing. That was in theory. It didn't happen very  
14 often that way.

15 Q. Okay.

16 A. I mean the vast majority of business that  
17 was done between Pet Life and Dad's was through  
18 Mapleleaf.

19 Q. Okay. Did Pet Life produce product --  
20 strike that.

21 When you say, it didn't happen that  
22 way. Are you saying from Pet Life's perspective it  
23 was rare that you would sell product to one of these  
24 exception customers, instead you would go through  
25 Mapleleaf?

1           A.       No.

2           Q.       Do you have any knowledge as to whether it  
3        was rare for Dad's? In other words, did Dad's  
4        maintain any appreciable number of customers that  
5        would have been previous Gains customers but the  
6        decision was made that Dad's would maintain the  
7        primary sales?

8           A.       It wasn't appreciable because that was one  
9        of the reasons that it was such a good fit. That  
10       Dad's and Pet Life worked together. There was not a  
11       large overlap of customers and there was not a large  
12       overlap of products. I mean, it was really the old  
13       80/20 rule that made it a good fit.

14        Q.       Okay. You had indicated that this was a  
15       profitable arrangement for Pet Life during the period  
16       when Gains was supplying pet treat products; correct?

17        A.       Yes.

18        Q.       Okay. And after that it was no longer  
19       profitable for Pet Life; is that right?

20        A.       It became less and less profitable.

21        Q.       Okay. And this may be an  
22       oversimplification -- but was that due to Pet Life's  
23       ability to produce the product on its own?

24        A.       It's an oversimplification. Part of it was  
25       the inability to produce that. But at the same time,

1 natural gas prices had doubled.

2 Q. Okay.

3 A. Wheat prices had -- I wouldn't say doubled,  
4 but were up 50, 60, 70 percent. And so those raw  
5 material costs were going up dramatically and we could  
6 not get a price increase from the customer because of  
7 the competition.

8 Q. Okay. Did those problems that you just  
9 identified, did those create any supply problems for  
10 Pet Life? In other words, did Pet Life at any time  
11 have a problem supplying sufficient product to service  
12 customers?

13 A. I'm sure there was always some customer  
14 wanting it yesterday, instead of tomorrow. But, by  
15 and large, Pet Life went out of its way to make the  
16 product, even though we knew we were selling it at a  
17 loss, or at margin. We tried not to short ship any  
18 customer. That would have damaged the relationship  
19 with Mapleleaf and, then, it would have had an overrun  
20 effect on Dad's. So Pet Life many, many times  
21 produced a product and sold it to Mapleleaf knowing we  
22 lost money on that product.

23 Q. Okay. Were you aware of any consistent  
24 complaints from Dad's or Mapleleaf of a shortage of  
25 pet treat products that were to be produced by Pet

1       Life?

2           A.     I would not say a consistent or a  
3     persistent. I can remember there was conversations,  
4     you know, why can't you blankity-blank get this  
5     product up here, and for whatever reason, we couldn't.  
6     We replaced our president during this period of time.  
7     We tried to find someone that would have greater  
8     ability, greater span of control over the plant, that  
9     was a very professional, well-trained person, highly  
10    educated person brought in as the operations manager.  
11    A lot of programs were put in place. A lot of  
12    maintenance -- preventative maintenance programs were  
13    put in place in order to keep these supply issues to a  
14    minimum.

15           Q.     Okay. Looking at Exhibit 6, the Settlement  
16    Agreement. We had previously discussed paragraph four  
17    of that agreement dealing with royalty obligations.  
18    What was your understanding of the business purpose of  
19    Settlement Agreement?

20           A.     Well, during this period, I guess, until  
21    December '02, Pet Life committed not to directly or  
22    indirectly be in the business of quote/unquote variety  
23    mix, which is a kibble-type product. Really the dog  
24    food that we talked about was the majority of that  
25    product. And Dad's agreed not directly or indirectly

1 to be in the private label, soft treats business.  
2 There was quite a bit of conversation on whether jerky  
3 would fall into the treat category. And Dad's was  
4 very insistent that jerky not be included in the  
5 injected molded treats.

6 Q. Okay. Those items that you just referred  
7 to, is that generally described in paragraph six,  
8 which is entitled, Restrictive Covenant, dealing with  
9 those market areas that Dad's was not to compete in  
10 and those that Pet Life was not to compete in; is that  
11 correct?

12 A. Uh-huh.

13 Q. Okay. Did you also understand that the  
14 Settlement Agreement was intended to effectuate the  
15 winding down and termination of Mapleleaf?

16 A. Yes.

17 Q. Okay. From Pet Life's perspective, why was  
18 it that it wanted to wind down and terminate  
19 Mapleleaf?

20 A. I think the bigger why was that Dad's wanted  
21 to.

22 Q. Okay.

23 A. They had grown unhappy with the arrangement.  
24 There had been management turnover at Pet Life. They  
25 didn't feel like Pet Life was -- this is an assumption

1 on my part. They didn't feel that Pet Life was doing  
2 what they should have done under the various  
3 agreements with Dad's. And they just -- the whole  
4 attitude of the Dad's management was changing.

5 Q. The attitude with respect to Mapleleaf?

6 A. With respect to Mapleleaf, yes.

7 Q. Okay. Did Pet Life want to wind down  
8 Mapleleaf?

9 A. Well, we would have liked to have had some  
10 amendments. We felt like we were paying the  
11 distributor, White Cap, too much money for what they  
12 were doing. They were not keeping their customers.  
13 They were losing customers, sales weren't growing. So  
14 if we could have had some amendments and made it a  
15 little more -- a unified company, where it wasn't  
16 everybody pointing fingers at who did what, who didn't  
17 do what, Pet Life would have liked to have stayed in  
18 some of the agreements. We also got the sense that  
19 Dad's was wanting to compete in the treat business.

20 Q. Okay.

21 A. They had told us about the injected molded  
22 treats. They were trying to buy a business that was  
23 in this. But we felt like they were really wanting to  
24 get the treat business, and the agreements that were  
25 with Mapleleaf would not allow them to do that.

1 Q. Okay. Was it your understanding that  
2 pursuant to the restrictive covenant, then, that would  
3 have precluded Dad's from getting into the treat  
4 business?

5 A. Yes.

6 Q. Okay. Do you believe that Dad's at any time  
7 breached its obligations under their restrictive  
8 covenant?

9 A. They walked a very tight line.

10 Q. Why do you say that?

11 A. We know that they had salesmen go to Pet  
12 Life customers and start, I would say, preselling,  
13 advertise the fact that they were going to be in the  
14 treat business. I cannot prove that they ever  
15 manufactured anything outside of the agreement and  
16 sold it. But they didn't wait until December 31st,  
17 '02 to start telling Pet Life customers that they were  
18 going to be selling treats directly in the future.

19 Q. Okay. Do you know if prior to December 31,  
20 '02 they ever manufactured, distributed or otherwise  
21 provided treats to any customers?

22 A. Pet Life salespeople told me that they did,  
23 but I have no proof of that.

24 Q. Okay. Do you know which customers?

25 A. Some of the larger, what we call, pet store

1       customers. Like a PetSmart, Petco, a mass  
2       merchandiser like Wal-Mart. It wasn't just one, it  
3       was several. And here again, this is our salespeople  
4       telling management and then they had several examples.  
5       So I would -- you had to feel like there's some reason  
6       to believe it. It wasn't just one time that I heard  
7       this complaint.

8           Q.        Okay. When you say "several examples," do  
9        you mean -- by that, do you mean, several examples in  
10       some of the stores that you've indicated? Are those  
11       the examples?

12          A.        Yes. It wouldn't be stores, it would be the  
13        purchasing manager in corporate headquarters for these  
14        accounts.

15          Q.        Okay. You indicated Petco, PetSmart?

16          A.        I was using those as examples.

17          Q.        Okay.

18          A.        It was larger companies where a significant  
19        impact could be made if they got the accounts -- got  
20        the business.

21          Q.        Okay. During that -- during the period of  
22        time referenced under the restrictive portion of the  
23        settlement agreement, did Pet Life lose any of those  
24        types of larger companies that had previously been  
25        clients?

1 A. I don't remember losing any. I just  
2 remember the salespeople saying how it was hard to  
3 keep the bids with Dad's in there whispering in their  
4 ear, talking about what they are going to be doing in  
5 early '03. If they had suppliers that had trouble  
6 delivering those product, don't worry, we'll be right  
7 around the corner.

8 Q. Okay.

9 A. I never had direct conversations with a  
10 store. But several salespeople that handled different  
11 stores were reporting this back to me.

12 Q. Okay. Do you remember the names of any of  
13 those salespeople?

14 A. David Sparks who handled PetSmart.

15 Q. Okay. Can you spell that for me?

16 A. P-e-t-s-m-a-r-t.

17 Q. Okay. I wasn't sure if it was mart or mark.

18 A. Yes.

19 Q. Okay. Them, I've heard of. David Sparks,  
20 anyone else that you can think of?

21 A. I think Grant Atkins.

22 Q. Was Grant Atkins related to any -- or did he  
23 go to any specific customer?

24 A. I can't think of the particular customer.

25 He was involved in product management, product

1 development.

2 Q. Okay.

3 A. And we keep hearing that Dad's was ready to  
4 bring out products that would compete with Pet Life as  
5 soon as the Supply Agreement -- excuse me -- as soon  
6 as the Settlement Agreement was over.

7 Q. Okay. Were you aware if Dad's supplied pet  
8 food to any of the larger companies that you had  
9 discussed that you thought they were, as you said,  
10 preselling treats to?

11 A. Dad's had a lot of the accounts. Dad's was  
12 a very large, well-known, private brand supplier.  
13 They specialized in this variety mix, this kibble-type  
14 product. They were very competitive in that product.  
15 I can't tell you for a fact which account they sold  
16 to. They just had a large market share, not just in  
17 the northeast, but really to other accounts across the  
18 country.

19 Q. Okay. At any time, either shortly before  
20 the Settlement Agreement or after, did Pet Life have  
21 any plans of entering into the food market?

22 A. None. Didn't have the equipment, didn't  
23 have the management, know how. It was never our  
24 intent.

25 Q. Okay. The Settlement Agreement, which is

1       Exhibit 6, was executed August 1st, 2001; is that  
2       correct?

3           A.       Yes.

4           Q.       Okay. And if you look at Exhibit 4, which  
5       is the Trademark, License and Transfer Agreement.

6                   THE WITNESS: Let me get to it here.

7       I've got it right here.

8           Q.       (By Mr. Devlin) That was executed  
9       September 1st, 2001, correct?

10          A.       Yes.

11          Q.       Okay. So that, obviously, that's a month  
12       after the Settlement Agreement was executed, correct?

13          A.       Yes.

14          Q.       Okay. At the time the Trademark, License  
15       and Transfer Agreement was executed, you were chairman  
16       of Pet Life; is that correct?

17          A.       Yes.

18          Q.       Okay. And were you also chairman of  
19       Sergeant's?

20          A.       Yes.

21          Q.       Okay. Can you tell me the purpose of the  
22       Trademark, License and Transfer Agreement?

23          A.       Sergeant's was purchasing certain trademarks  
24       that related, I would think, totally to the treat  
25       business.

1 Q. Okay.

2 A. And they paid cash and assumed certainly  
3 liabilities.

4 Q. Okay. Why was it that Pet Life -- strike  
5 that.

6 Did Pet Life want to sell the  
7 trademarks at issue in the Trademark, License and  
8 Transfer Agreement to Sergeant's?

9 A. Pet Life wanted to sell it to anyone that  
10 would come in and offer it. And they had very little  
11 time to go out to the marketplace and solicit buyers.  
12 They were in desperate need of cash. They were under  
13 pressure from their bank, breach of covenants. And  
14 they desperately needed someone that could see the  
15 value of these trademarks to come in and try to make a  
16 deal with them.

17 Q. Okay. So Pet Life -- if you remember, when  
18 did Pet Life make the decision that it was interested  
19 in selling these trademarks?

20 A. After Pet Life started manufacturing these  
21 treats, they went through management change, they went  
22 through raw material supply, cost issues. They  
23 realized that they had to retool their business in  
24 order to survive as a company. And they were better  
25 off to try to create a company that was in the biscuit

1 business and not in the formulated treat business.

2 Q. Okay.

3 A. That took a period of time, you know,  
4 several weeks and months, not just one day.

5 Q. Okay.

6 A. I can't tell you the -- the exact day that  
7 it was decided that's the best way to go. But it was  
8 an ongoing, what are we going to do to keep the  
9 business healthy?

10 Q. Okay. Did Pet Life market the trademarks to  
11 any entity, other than Sergeant's?

12 A. Not aware of any. We did tell the bank what  
13 we were contemplating, to get their ideas. Sometimes  
14 banks will have names of people that you can sell  
15 assets to. They certainly had to approve the sale.  
16 They were the, in my mind, the protector of arm's  
17 length here. Because I was in a tenuous spot being  
18 the chairman of both companies. And I wanted to make  
19 sure that one company wasn't getting the upper hand  
20 over the other. And I felt like LaSalle Bank -- it's  
21 owned by Ambro, one of the largest banks in the  
22 world -- I felt like they were very capable, very  
23 experienced bankers and they would not let a  
24 transaction be completed to the detriment of their  
25 customer. So we kept LaSalle informed and our

1 attorney, really, handled all of the negotiations  
2 between Sergeant's and the bank.

3 Q. Okay. Is that how the negotiations  
4 generally went, that LaSalle -- well, did you  
5 understand that LaSalle, to an extent, represented Pet  
6 Life's interest in the negotiations with Sergeant's?

7 A. I don't know if you could say legally  
8 represented because they weren't on the board or a  
9 shareholder. But they had all of the assets under  
10 mortgage and millions of dollars in debt and breach of  
11 covenants. So they had to approve any sale of an  
12 asset.

13 Q. Okay. From Sergeant's perspective, why did  
14 Sergeant's want to buy the trademarks?

15 A. Sergeant's is a company over a hundred years  
16 old that has a definite brand identity and marketplace  
17 for it's flea and tick products. We have got dog  
18 collars and drops that kills fleas and ticks and so  
19 forth. And they were trying to become a broader based  
20 pet care product company. They were already in  
21 rawhide and natural treats, they were in toys. And it  
22 was a planned market niche that they were wanting to  
23 get in, and had studied that, and were familiar with  
24 what formulated treat markets were, and they thought  
25 it would be a good addition to their company.

1 Q. Okay. You had previously indicated that  
2 there was a change in ownership in Sergeant's around  
3 September of 2000; is that correct?

4 A. Yes.

5 Q. The business model that you just laid out  
6 for Sergeant's, is that a model that existed prior to  
7 that change in ownership?

8 A. Not that I'm aware of.

9 Q. Okay.

10 A. What I'm aware of is that the former owner  
11 was going to skinny-down many of the products that  
12 Sergeant's had and just be a natural treat company.

13 Q. Okay. And then, upon the change in  
14 ownership, to where Mr. Sowell was now the majority  
15 shareholder, is that when the expansion of -- the  
16 planned expansion of Sergeant's presence in different  
17 markets came out?

18 A. Yes. It was over -- immediately following  
19 that acquisition, we put together a different  
20 long-term strategy for Sergeant's.

21 Q. Okay. And as part of that strategy  
22 Sergeant's purchased the trademarks from Pet Life?

23 A. It wasn't -- it wasn't, you know, the next  
24 month, but it was --

25 Q. Sure.

1           A.       And we had talked to other companies about  
2       buying their treat business.  And so Sergeant's was  
3       educated in the treat business and was really, from a  
4       management point of view, willing to take on that  
5       business and pay fair market price for that business.  
6       It wasn't just an, Oh, we think we want to be in that  
7       business.  They had been looking for a year.

8           Q.       Okay.  And as the consideration that  
9       Sergeant's paid for the trademarks, did you understand  
10      the consideration was in two parts, an initial payment  
11      of \$600,000, and then also the assumption of certain  
12      obligations to Gains and then to the brokers, White  
13      Cap, Schulman and Kofsky?

14       A.       Yes.

15       Q.       Okay.  What was -- let me ask this question.  
16      Prior to the Trademark, License and Transfer  
17      Agreement, had Pet Life been making its share of the  
18      royalty payments to Gains that it was obligated to  
19      make under the 1999 agreement?

20       A.       I believe so, yes.

21       Q.       Okay.  After the execution of the Trademark,  
22      License and Transfer Agreement, did Pet Life continue  
23      to make any payments pursuant to those royalty  
24      obligations?

25       A.       I think Sergeant's assumed those

1 obligations.

2 Q. Okay. Did Pet Life notify Gains of the  
3 assumption of those obligations?

4 A. I don't have personal knowledge that they  
5 did or didn't.

6 Q. Okay. With respect to Dad's, did Sergeant's  
7 notify Dad's?

8 A. I don't -- I can't tell you for sure one way  
9 or the other.

10 Q. Okay. Do you know if -- let me ask this  
11 question. Did Pet Life notify -- I may have misspoken  
12 on that last question, I apologize.

13 Did Pet Life notify Dad's?

14 A. I'm not aware of it.

15 Q. Okay.

16 MR. DEVLIN: Can we take a break for  
17 two minutes? Is that okay?

18 THE WITNESS: You bet.

19 MR. WHITE: Sure.

20 (Break taken from 11:02 a.m. to  
21 11:11 a.m.)

22 Q. (By Mr. Devlin) Okay. When we finished, I  
23 believe, I was asking you some questions about whether  
24 Pet Life and Sergeant's had notified Gains or Dad's of  
25 the transfer of the trademarks and the assumption of

1 the obligations. And just to make sure that I hit the  
2 right names, did Pet Life notify either Dad's or Gains  
3 of the transfer of the trademarks to Sergeant's?

4 A. I personally don't know.

5 Q. Okay. And is that the same answer for the  
6 assumption of obligations?

7 A. Yes.

8 Q. Okay. Was Pet Life aware at or around  
9 August of 2001, when the Mapleleaf Settlement  
10 Agreement was executed, that it would be selling the  
11 trademarks it had -- that it had obtained from Gains?

12 A. Was Pet Life aware?

13 Q. Uh-huh.

14 A. Pet Life was in negotiations and discussions  
15 with the bank selling, really, any asset that would  
16 help keep the company's cash -- cash, meaning payroll  
17 and so forth. So I'm sure that the trademarks had  
18 been talked about. I can't tell you just -- that was  
19 the only discussion. I think the discussions were  
20 much broader than just, Are we going to sell the  
21 trademarks or not?

22 Q. Okay. During the negotiations and  
23 discussions that Pet Life had with Dad's regarding the  
24 restrictive covenant and the settlement agreement and  
25 the winding down of Mapleleaf, do you know, did Pet

1       Life ever let Dad's know that it was a possibility  
2       that the trademarks would be transferred to another  
3       entity and be sold?

4           A.       I don't know that we ever told Dad's.

5           Q.       Okay. During the wind down of Mapleleaf, do  
6       you know that in the -- well, let me ask the back up  
7       question. Were there discussions between Pet Life and  
8       Dad's during the wind down of Mapleleaf, specifically,  
9       with respect to determining where the Mapleleaf  
10      customers were going to go?

11          A.       Yeah. That -- those type of discussions  
12       started before August and were really initiated  
13       outside of the realm of, is Pet Life going to sell  
14       assets. Pet Life became pretty discouraged with the  
15       Mapleleaf arrangement not long after it started,  
16       because we admitted we didn't have the personnel and  
17       accounting and so forth to handle the Mapleleaf  
18       operation, didn't have the warehouse. Dad's said, Oh,  
19       we have all of it. We'll volunteer. We just heard  
20       how they were trying to help us -- help Pet Life. We  
21       soon found out that who has the cash is king. All of  
22       the money would go up there and we couldn't get our  
23       money for Pet Life, we couldn't get bills paid, they  
24       were offsetting credits quote/unquote screw ups of Pet  
25       Life. We have didn't like the arrangement, after a

1 short period of time, because we felt like Dad's was  
2 taking advantage of Pet Life through the Mapleleaf  
3 arrangement and through their ability to hold the  
4 checkbook, so to speak.

5 Q. Okay.

6 A. So we had already started talking to them  
7 about, Gee, this isn't fair. We can't get any  
8 response. You know, Where's all of this help you said  
9 you had?

10 So those discussions had already  
11 started and were overriding a lot of other issues with  
12 Dad's and Pet Life. You had the salespeople saying,  
13 you know, White Cap wasn't doing their job, we ought  
14 to take them over. Just a lot of issues. When  
15 something is not going right, you know, the finger  
16 starts being pointed and then all of a sudden a  
17 different finger gets pointed and things fall apart.

18 Q. Okay. I believe you had indicated, though,  
19 that at -- around the time of the Settlement  
20 Agreement, the August 1st Settlement Agreement, that  
21 Pet Life -- had it been Pet Life's sole decision,  
22 would have wanted to proceed and continued proceeding  
23 with Mapleleaf with some changes; is that right?

24 A. With changes in amendments, yes.

25 Q. Okay. All right. With respect to the

1 discussions about -- for lack of a better word --  
2 divvying up or dealing with the Mapleleaf customers,  
3 whether those discussions occurred before or after the  
4 settlement agreement. At any time did those  
5 discussions include that Sergeant's was now the owner  
6 of those trademarks?

7 A. I can't remember that discussion, no.

8 Q. Okay. I believe you also had testified that  
9 after selling the trademarks to Sergeant's, Pet Life  
10 was -- Pet Life held the position that Sergeant's had  
11 now assumed the obligations to make the royalty  
12 payments to Gains; is that right?

13 A. Yes.

14 Q. Okay. Did Pet Life ever determine whether  
15 Sergeant's had actually made those payments?

16 A. I am not aware of what effort took place.  
17 Pet Life underwent another series of management  
18 changes. The gentleman I just mentioned, Mr. Atherly,  
19 left and we hired another person. And so there was  
20 quite a bit of turmoil at Pet Life by this point in  
21 time. The name Sergeant's wasn't a secret to Dad's.  
22 We didn't try to keep the secret that investors,  
23 myself, Jim Sowell and others, bought Sergeant's. I  
24 mean, you could ask the Dad's management, did you ever  
25 -- were you ever told that Jim Sowell and his group

1       bought Sergeant's. And I think they'd say, yes. I  
2       mean, it wasn't a secret.

3           Q.     Okay. Did you understand that Sergeant's  
4       assumption of the obligations to pay the royalty  
5       obligations, to pay Gains or the brokers, was capped  
6       at \$270,000 for Gains and \$50,000 for the brokers?

7           A.     Yes.

8           Q.     Okay. Did you also understand that the  
9       settlement and royalty agreement -- or the supply and  
10       royalty agreement that created those obligations  
11       provided for royalty payments that could exceed that  
12       amount?

13          A.     The original agreement stated that, yes.

14          Q.     Okay. Do you know if Pet Life ever inquired  
15       to see if it would be obligated to make any payments  
16       that were in excess of the \$270,000?

17          A.     I don't know.

18          Q.     Okay. Subsequent to selling the trademarks  
19       to Sergeant's, did Pet Life continue to manufacture  
20       the pet treat products for Sergeant's?

21          A.     For a period of time, yes.

22          Q.     Okay. For how long a period of time?

23          A.     A short period of time. I'd have to go back  
24       and look at the files or documents. But it was more,  
25       like, a matter of months, not years.

1 Q. Okay. If we go to Exhibit 8, which is the  
2 Notification and Cancellation Agreement. That  
3 agreement's dated May 2nd, 2002. Do you know if  
4 between September 2001 and May of 2002, for that  
5 entire period of time, did Pet Life continue to  
6 manufacture product for Sergeant's to be sold under  
7 the trademarks that have been sold to Sergeant's?

8 A. I would think a lot of the products, yes.

9 Q. Okay. The Notification and Cancellation  
10 Agreement that's Exhibit 8, that agreement was  
11 executed at or around the same time a number of other  
12 agreements were executed that dealt with the  
13 foreclosure and sale of substantial assets of Pet  
14 Life; is that correct?

15 A. Yes.

16 Q. Okay. Would it be fair to say that that  
17 agreement was executed at or around the time when Pet  
18 Life, as you said before, became a much more  
19 restricted and much more limited entity? The majority  
20 of its assets and business had been either foreclosed  
21 upon or sold at that point in time.

22           A.       I'm sorry.   I lost the train of your  
23       question there.

24 Q. It was a bad question.

25 At or around that time, did -- was

1 that -- did Pet Life sell the vast majority of its  
2 business to World Pet?

3 A. At and around that time, yes. It was  
4 sometime after this, but it was at and around that  
5 time. I'd just have to get the date of the agreement  
6 for World Pet.

7 Q. Okay. Let's do that.

8 A. The bank, really, was the driving force as  
9 far as who was going to buy the vast majority of the  
10 assets, the timing, and dollar amount, and so forth.

11 Q. Okay. All right. Let's look at these. You  
12 have there Exhibit 8, which is the Notification and  
13 Cancellation agreement.

14 A. Yes.

15 Q. Here's Exhibit 10, which is a Foreclosure  
16 Agreement.

17 A. Okay.

18 Q. Is that Foreclosure Agreement the agreement  
19 that effectuated the transfer of the majority of Pet  
20 Life's assets to World Pet?

21 A. It is.

22 Q. Okay. And that agreement occurred the day  
23 after the Notification and Cancellation Agreement,  
24 correct?

25 A. Yes.

1 Q. Okay. And you had indicated that this  
2 Foreclosure Agreement was at the -- you didn't use  
3 this word and tell me if it's wrong -- that LaSalle  
4 was the entity that was pushing for this foreclosure  
5 agreement.

6 A. LaSalle was pushing for a friendly  
7 foreclosure to try to get their debt paid.

8 Q. Okay. Pursuant to the Notification and  
9 Cancellation Agreement, from Pet Life's perspective,  
10 what was your understanding of the purpose of that  
11 agreement?

12 A. It set upon the terms which Sergeant's --  
13 the method and the amount that would pay LaSalle  
14 Business Credit for certain invoices and product that  
15 Pet Life had shipped to Sergeant's and so forth.

16 Q. Okay. And in exchange for that, Sergeant's  
17 was to be relieved of its obligations to continue to  
18 make royalty payments that had been assumed in the  
19 September 2001 agreement; is that right?

20 A. That's correct.

21 Q. Okay. The amount of money that Sergeant's  
22 was to pay to Pet Life, which is indicated in the  
23 Notification and Cancellation Agreement, was that the  
24 amount of outstanding invoices that existed between  
25 Pet Life and Sergeant's?

1           A.       That -- that exercise was put together by  
2       the Pet Life people and the \$447,000 here. I think  
3       I've seen a 446 number, but yeah, that's -- that's an  
4       attempt to say that was the total amount.

5           Q.       Okay. So in paragraph three, Pet Life -- of  
6       the Notification and Cancellation Agreement, Pet Life  
7       is discussing the amount that it is obligated to  
8       Sergeant's for; is that right?

9           A.       Yes.

10          Q.       Okay. In paragraph one of that agreement,  
11       that's the paragraph that indicates what Sergeant's is  
12       going to pay directly to LaSalle. And that's the  
13       \$353,000 number, right?

14          A.       Right.

15          Q.       Okay. I'm just trying to -- I believe the  
16       agreement says that, but I just want to make sure I'm  
17       right. That number -- the \$353,000 number, I guess,  
18       I'll just read the agreement -- "Which represents the  
19       current total of all invoices for products produced by  
20       Pet Life and shipped to Sergeant's, for the account of  
21       Sergeant's, without deduction." Correct? Is that  
22       your understanding of where that number came from?

23          A.       Yes.

24          Q.       Okay. Was it your understanding that  
25       Sergeant's believed they had deductions as to that

1 amount for whatever reason, defective product or  
2 something like that?

3 A. I can't tell you that they knew for certain.  
4 But you could just guess that all product wasn't 100  
5 percent.

6 Q. Okay.

7 A. I mean there was discussions, what about  
8 deductions, what about bad product, you know. There  
9 was conversation there and the bank was pretty  
10 insistent that they wouldn't give Sergeant's much of a  
11 open door to come back and claim deductions.

12 Q. Okay.

13 A. But there's -- there's always deductions.

14 Q. Okay.

15 A. And Sergeant's was trying to leave that  
16 concept open. But the bank wouldn't stand for it.

17 Q. Okay. All right. So some of that \$353,000  
18 number was contested by Sergeant's, but some of it  
19 wasn't; is that fair?

20 A. Well, I don't know that we could even  
21 legally contest it after you signed this agreement.  
22 But we were being told by Sergeant's people that some  
23 of this stuff just didn't ever -- be good, it's just  
24 common sense.

25 Q. Okay. All right. After this agreement was

1       executed, which purports to relieve Sergeant's of the  
2       obligation to make any future royalty payments to  
3       Gains or the brokers, was it your understanding that  
4       Pet Life now had the obligation to do that again? To  
5       make those royalty payments?

6           A.    No, that's not my understanding. Because  
7       the bank may have stepped in and said, you can't make  
8       the payments. I mean, I don't know what was happening  
9       between the bank and Pet Life at this point in time.

10          Q.    Okay. At this point in time, were you still  
11       the chairman of Pet Life?

12          A.    I think at the time Pet Life sold its  
13       assets, I resigned. So it may have been on this day  
14       or a week or two later, all the other directors had  
15       resigned by now and I was left, really, just trying to  
16       cooperate with the bank. We had indicated all along  
17       we'd cooperate with the bank. So they needed a board.  
18       They needed an officer to sign the documents. And so  
19       I really was just in a perfunctory role at that point  
20       in time. I wasn't involved in running the business.  
21       The bank had brought in outside consultants to run the  
22       business. I was simply there to keep the bank from  
23       having to reconstitute a board and taking an  
24       unfriendly action in starting over. We saved the bank  
25       thousands and thousands of dollars by our cooperation.

1           Q.     Okay.  Let me just ask this question, did  
2     you have any understanding as to what was supposed --  
3     what would have been the status of the royalty  
4     obligations on Pet Life's obligations that were  
5     assumed by Sergeant's in '01 after the execution of  
6     this Cancellation and Notification Agreement?

7           A.     No.

8           Q.     Okay.  As of May 2nd, 2002, would Pet Life  
9     have been in a financial position to be able to make  
10    these payments?

11          A.     The bank would have been totally in charge  
12    of whether they make the payments or not.

13          Q.     Okay.  And to your knowledge, as of May 2nd,  
14    2002, was the bank's security interest in Pet Life at  
15    a point where -- I mean, did it exceed the value of  
16    Pet Life?

17          A.     In our mind it did.

18          Q.     Okay.  And shortly after --

19          A.     Let me make sure I understood the question.  
20    The loan amount exceeded the value of the assets?

21          Q.     Correct.

22          A.     Yes.

23          Q.     So Pet Life in your mind was insolvent at  
24    that point?

25          A.     Yes.

1 Q. And sometime after May 2nd, 2002, Pet Life  
2 did go into bankruptcy; is that correct?

3 A. They went into bankruptcy. I can't tell you  
4 what chapter, you know. But, yes, I understand they  
5 were put into bankruptcy.

6 Q. Okay. Do you know, after the Notification  
7 and Cancellation Agreement, if Pet Life notified Dad's  
8 that the obligations that had been assumed by  
9 Sergeant's had now been -- that Sergeant's was now  
10 relieved of those obligations?

11 A. I do not know.

12 Q. Okay. Do you know if Sergeant's had any  
13 conversations with Dad's regarding that issue?

14 A. I do not know.

15 Q. Okay. Do you know, subsequent to this  
16 agreement, the Notification and Cancellation  
17 Agreement, whether Dad's had any obligation -- whether  
18 Dad's had to make any payments on those royalty  
19 obligations to Gains?

20 A. Because of this agreement being signed?

21 Q. Or after that agreement?

22 MR. WHITE: Are you saying "had to"  
23 or "did"?

24 MR. DEVLIN: I guess, had to.

25 A. Well, I remember the original agreement was

1       jointly and severally. So I would assume they had to.

2           Q.       (By Mr. Devlin) Okay.

3           A.       Unless there had been another agreement  
4        signed between Gains and Chateau and Dad's, which  
5        there may have been. I might not have been aware of  
6        it.

7           Q.       You say the original agreement was joint and  
8        several. Did you assume -- or did you understand that  
9        when Sergeant's assumed the obligation in the  
10       September 2001 Agreement, it was assuming that  
11       obligation as a joint and several obligation?

12          A.       It was assuming all of Pet Life's  
13        obligations, yes.

14          Q.       Okay.

15                    MR. DEVLIN: That's all of the  
16        questions I have.

17                    MR. WHITE: Okay. We will sign.

18                    (Off the record at 11:31 a.m.)

19

20

21

22

23

24

25